

### REMARKS

Claims 1-33 are currently pending in the application. Applicants respectfully request reconsideration of the claims currently pending in the application.

Applicants thank the Examiner for favorable consideration and allowance of claims 18-33.

In the Response under 37 C.F.R § 1.116 filed April 28, 2003, the remarks on page 7 of the Response regarding change in and amendment of inventorship are in error. Applicants hereby withdraw those prior remarks.

In paragraph 1 on page 2 of the Office Action, claims 1-14 and 17 are rejected under 35 U.S.C. §102 (e) as being anticipated by Eberlin (U.S. Patent Number 5,702,048). Applicants respectfully traverse the rejections.

To anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Therefore, all claim elements, and their limitations, must be found in the prior art reference to maintain a rejection based on 35 U.S.C. §102. Applicants respectfully submit that Eberlin does not teach every element of claims 1, 4, 13, and 14, and therefore fails to anticipate claims 1-14 and 17.

Claim 1 sets forth a heart valve leaflet fastener comprising at least one pair of arms, the pair being sized and adapted for fastening two adjacent heart valve leaflets. The arms

pivot from one orientation to a gripping position with ends of respective paired arms being directed toward each other.

Claim 4 relates to a kit comprising a cardiac catheter, a fastener applicator and a leaflet fastener of claim 1. Claim 13 pertains to a device comprising a catheter, a leaflet fastener applicator and a leaflet fastener of claim 1.

Eberlin sets forth a device for microanastomosis of blood vessels. The two arms (3) of the gripper. hold a staple (4) in sockets provided at the end of the arms of the gripper. (col. 3, lines 27-28). The arms (3) do not fasten the adjacent leaflets, as in Applicants' claim 1. Arms (3) only hold the staple (4), and the staple (4), not the arms (3), are used to fasten the blood vessels. Further, the ends of arms (3) are not directed towards each other. Rather, ends of the arms (3) in Eberlin are cut off, and extend outwardly and away from one another. Applicants respectfully submit that Eberlin does not disclose the Applicants' invention as set forth in claim 1. Since all of the claim limitations of claim 1 are included in claims 4 and 13 (leaflet fastener of claim 1), Applicants respectfully submit that Eberlin does not disclose the Applicants' invention as set forth in claims 4 and 13. Therefore, claims 1, 4 and 13 are not anticipated by Eberlin, and are allowable over Eberlin.

Claim 14 relates to a heart valve repair instrument comprising a ring and a ring applicator. The Examiner refers to staple 4 as the ring. "Ring" is defined as "a circular band for holding, connecting, hanging, pulling, packing or sealing". See Merriam-Webster's Collegiate Dictionary, Tenth Edition, attached as Exhibit A. Staple (4) is characterized by a C shape formed by a central part (4a) and two legs (5). See col. 3, lines 63-65. A "C" shaped structure is not circular structure, and not a ring, as set forth in

Applicants' claim 14. Thus, Applicants respectfully submit that Eberlin does not anticipate claim 14.

Dependent claims 2-3, 5-12, and 17, which are dependent from independent claims 1, 4, and 14, were also rejected under 35 U.S.C. §102(e) as being unpatentable over Eberlin. While Applicants does not acquiesce with the particular rejections to these dependent claims, it is believed that these rejections are moot in view of the remarks made in connection with independent claims 1, 4, and 14. These dependent claims include all of the limitations of the base claim and any intervening claims, and recite additional features which further distinguish these claims from the cited references. Therefore, dependent claims 2-3, 5-12, and 17 are also in condition for allowance.

Applicants respectfully request withdrawal of the rejection of claims 1-14 and 17 under 35 U.S.C. § 102 (e) as being anticipated by Eberlin.

In view of the reasons provided above, it is believed that all pending claims are in condition for allowance. Applicants respectfully request favorable reconsideration and early allowance of all pending claims.

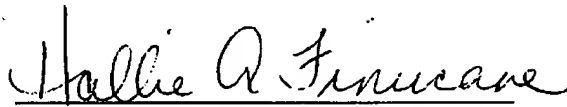
If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicants' attorney of record, Hallie A. Finucane at (952) 253-4134.

Respectfully submitted,

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